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10/687,534	10/15/2003	Robert H. Kondrk	APL1P291/P3157	7744
67521 7590 08/12/2008 TECHNOLOGY & INNOVATION LAW GROUP, PC ATTN: 101 19200 STEVENS CREEK BLVD., SUITE 240 CUPERTINO, CA 95014				
EXAMINER				
REFAI, RAMSEY				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/687,534

Applicant(s)

KONDRK ET AL.

Examiner

Ramsey Refai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
4a) Of the above claim(s) 47-49 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-46 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 13 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-850)
Paper No(s)/Mail Date 04/28/05, 01/30/06, 02/22/08
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Responsive to Response to Election/Restriction filed July 14, 2008. Applicant's election **without traverse** of Group I (1-46) is acknowledged.

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 04/28/05, 01/30/06, 02/22/08 are being considered by the examiner.

Specification

2. The Applicant is requested to update the Cross-Reference to Related Applications section.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter of claims 14, 17-19, 37, and 45 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views

of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 30-46 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to *computer-readable mediums*, which according to paragraph [0059] of the Applicant's specification can be carrier wave signals. Signal claims and carrier wave claims are ineligible for patent protection because they do not fall within any of the four statutory classes of § 101. The claims are therefore directed to non-statutory subject matter. To overcome this rejection, it is suggested the Applicant amend the claims to recited *computer readable storage medium*.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

7. Claims 1-6, 11-14, 16, 18, 21, 23-29, 31-34, 36, 37, 39-41 and 45-46 are rejected under 35 U.S.C. 102(a) as being Wiser et al by (US 6,385,596).

8. As per claim 1, Wiser et al teach a method for submission of a media collection to a media distribution site (**column 9, lines 40-53**), said method comprising:

obtaining metadata for the media collection (**column 11, lines 63-column 12, line 15, column 6, lines 59-67; descriptive data for the media data file**);

identifying media content for a plurality of media items to be included in the media collection (**column 7, lines 4-36; data chunks includes different audio qualities**) the media content being imported from a media source (**column 9, lines 40-53**);

converting the identified media content for the plurality of media items into compressed media files (**column 6, lines 53-58**);

obtaining metadata for the identified media content (**column 12, lines 9-15**);

forming an electronic package of the media collection, the electronic package including at least the compressed media files and the metadata associated with the media collection and the identified media content (**Fig 2, media data file**); and

electronically transmitting the electronic package to the media distribution site (**column 9, lines 40-53, column 11, lines 20-25**).

9. As per claim 2, Wiser et al teach wherein the metadata for the media collection obtained includes at least descriptive media collection information (**column 11, lines 63-column 12, line 15, column 6, lines 59-67**).

10. As per claim 3, Wiser et al teach wherein the descriptive media collection information includes, for the media collection, at least a title, an artist, a genre, a label name, copyright information, release information, and a numerical identifier (**column 11, lines 63-column 12, line 15, column 6, lines 59-67**).

11. As per claim 4, Wiser et al teach wherein the descriptive media collection information further includes an image to be used as artwork for the media collection (**column 12, lines 15, column 6, line 3**).

12. As per claim 5, Wiser et al teach wherein the metadata for the media collection is entered by a user (**column 11, line 63-column 12, lines 15; artist**).

13. As per claim 6, Wiser et al teach wherein the media items are songs (**abstract, column 12, line 2; music works**) and wherein said converting encodes the media content for each of the songs into a compressed audio format (**column 7, lines 5-16; different sampling and compression levels**).

14. As per claim 11, Wiser et al teach wherein the media items are audio tracks (**abstract, column 12, lines 2-4, fig 14; music**).

15. As per claim 12, Wiser et al teach wherein the metadata for the identified media content includes at least descriptive media item information for each of the media items of the identified media content (**column 6, lines 59-60**).

16. As per claim 13, Wiser et al teach wherein the descriptive media item information includes, for the corresponding media item, at least a title, an artist, a genre, track number, a label name, copyright information, and a numerical identifier (**column 11, lines 63-column 12, line 15, column 6, lines 59-67**).

17. As per claim 14, Wiser et al teach wherein the descriptive media item information further includes an indication as to whether the identified media content is available for sale (**column 7, lines 6, fig 2, 216**).

18. As per claim 16, Wiser et al teach wherein the metadata for the identified media content is entered by a user (**column 11, line 63-column 12, lines 15; artist**).

19. As per claim 18, Wiser et al teach wherein a second portion of the metadata for the identified media content is entered by a user (**column 12, lines 9-11**).

20. As per claim 21, Wiser et al teach wherein the electronic package of the media collection comprises a folder of files, one of the files is a markup language file containing at least the metadata (**column 5, lines 51, 60, column 6, lines 20-28; web browser used**); another of the files is an image file for artwork associated with the media collection, and a plurality of other of the files are compressed audio files (**fig 2, column 11, line 63-column 12, line 25**).

21. As per claim 23, Wiser et al teach wherein said transmitting operates to electronically transmit the electronic package to the media distribution site over the Internet using encryption (**column 6, lines 53-58, column 7, lines 38-46, abstract**).

22. As per claim 24, Wiser et al teach wherein said method further comprises: receiving the electronic package at the media distribution site; parsing the electronic package to retrieve components from the electronic package, the components including at least the identified media content in the compressed media format, the metadata for the media collection and the metadata for the at least one media item; and storing the components into a media distribution database (column 12, lines 55-66, column 11, lines 20-25).

23. As per claim 25, Wiser et al teach wherein said method further comprises: rendering the media collection and the media items thereof available for online purchase at the media distribution site (column 12, lines 60-62).

24. As per claim 26, Wiser et al teach wherein said method further comprises: rendering the media collection and the media items thereof available for online purchase at the media distribution site (column 12, lines 60-62).

25. As per claim 27, Wiser et al teach wherein said method is performed by an application program (column 11, line 63-column 12, line 11; authoring tool).

26. As per claim 28, Wiser et al teach wherein, when the application program performs said obtaining of the metadata for the media collection and said obtaining of the metadata for the identified media content, a user interacts with the application program (column 11, line 63-column 12, line 11; authoring tool).

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27. As per claim 29, Wiser et al teach wherein the user is a representative for an independent recording label, and wherein said application program facilitates the independent recording label in submission of the media collection to the media distribution site for subsequent online distribution (**column 10, lines 60-67**).

28. Claim 31 contains similar limitations as claim 1 and is therefore rejected under the same rationale.

29. As per claim 32, Wiser et al teach wherein the electronic package is a folder having a plurality of files (**fig 2, column 11, line 63-column 12, line 25**).

30. As per claim 33, Wiser et al teach wherein the media items are audio tracks (**abstract, column 12, lines 2-4, fig 14; music**), and the compressed media files are compressed format audio files (**column 7, lines 5-23**).

31. As per claim 34, Wiser et al teach wherein said computer code for identifying the media content operates to assist a user in identifying the media content (**column 11, line 63-column 12, line 1**).

32. As per claim 36, Wiser et al teach, wherein the metadata is provided by a user (**column 11, line 63-column 12, lines 15; artist**).

33. As per claim 37, Wiser et al teach wherein the metadata for the identified media content includes an indication as to whether the identified media content is available for sale (**column 7, lines 6, fig 2, 216**).

34. As per claim 39, Wiser et al teach wherein the media distribution site is an online media distribution site (**abstract**).

35. As per claim 40, Wiser et al teach wherein said computer program code for electronically transmitting operates to electronically transmit the electronic package to the media distribution site over the Internet using encryption (**column 6, lines 53-58, column 7, lines 38-46, abstract**).

36. Claim 41 contains similar limitations as claims 4 and 21 and therefore is rejected under the same rationale.

37. As per claim 45, Wiser et al teach wherein said computer readable medium further comprises: computer program code for rendering the media collection and the media items thereof available for online purchase at the media distribution site (**column 12, lines 60-62**).

38. As per claim 46, Wiser et al teach, wherein said computer readable medium facilitates an independent recording label with submission of the media collection to the media distribution site for subsequent online distribution (**column 10, lines 60-67**).

Claim Rejections - 35 USC § 103

39. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

40. Claims 17, 19, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiser et al.

41. As per claim 17, Wiser et al fails to explicitly teach *wherein a first portion of the metadata for the identified media content is obtained from the metadata for the media collection*. However, it would have been obvious to one of ordinary skill in the art to include this feature in Wiser et al because doing so would create a way to associate the media with the media file in Wiser et al by associating the metadata such as including the title of the media file in the title of the media.

42. As per claim 19, Wiser et al teach a "For-sale" flag to define whether the media chunk is for sale (**column 7, lines 6, fig 2, 216**) but fails to explicitly teach wherein *the metadata for the identified media content includes an indication as to whether the identified media content is available for sale*. However, it would have been obvious to one of ordinary skill in the art to modify the teaching of Wiser et al to include such feature because doing so would allow for an artist to indicate the content "For-sale" by entering the information as descriptive data.

43. As per claim 35, although Wiser et al teach compact discs (**background**), they fail to teach wherein *the media source is a compact disc*. However, it would have been obvious to one

of ordinary skill in the art to include this feature in Wiser et al because doing so would allow an artist to upload his music to the content manager directly from a compact disc.

44. Claims 7-10, 22, 30, 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiser et al in view of "Official Notice".

45. As per claims 7-10, Wiser et al teach that the system allow the system to operate with multiple compression formats (**column 7, lines 23-26**) but fails to explicitly teach wherein the compressed audio format is MPEG based, MPEG4 based, Advanced Audio Coding (AAC), MP4, M4 or M4a. However, "Official Notice" is taken that the concept and advantages of such formats are well known in the art. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to include any one of these audio formats in Wiser et al because doing so would allow for the media files to be efficiently communicated via the Internet (**see paragraph [0005] of Applicant's specification**).

46. As per claim 22, Wiser et al fail to *explicitly* teach wherein the markup language file is *an XML file*, the image file is a *JPEG file*, and the compressed audio files are *MPEG4 based*. However, "Official Notice" is taken that both the concept and advantage of an XML file, a JPEG file and MPEG4 are well known in the art as evidenced by Marsh (**US 7,073,193, see at least column 6, lines 35-48, column 51, lines 25-37**) and the Applicant's specification (**see paragraph [0005]**). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to include these features in Wiser et al because doing so would allow for the media file to be efficiently communicated via the Internet.

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47. As per claim 30, although Wiser et al teach determining availability of the server (**column 15, lines 10-17**), they fail to teach *determining whether the electronic package should be transmitted or queued; queuing the electronic package when said determining determines that the electronic package should be queued; and transmitting the electronic package to the media distribution site when said determining determines that the electronic package should be transmitted*. However, "Official Notice" is taken that the concept and advantage of determining whether to transmit or queue data and queuing a transmission until transmission is possible is well known in the art as evidenced by **Tang et al (US 2003/0074465)** and **Blackwell et al (US 6,085,253)**. It would have been obvious to one of ordinary skill in the art to include this feature in Wiser et al because doing so would allow data file to be queued when the server or the bandwidth is unavailable for uploading the data file.

48. Claim 42 contains similar limitations as claim 22 and therefore is rejected under the same rationale.

49. Claim 43 contains similar limitations as claim 30 and therefore is rejected under the same rationale.

50. As per claim 44, Wiser et al teach wherein said computer program code for electronically transmitting further comprises: computer program code for encrypting at least a portion of the electronic package prior to transmission to the media distribution site (**column 6, lines 53-58, column 7, lines 38-46, abstract**).

51. Claims 15, 20, 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiser et al in view of Marsh (US 7,073,193).

52. As per claim 15, Wiser et al teach descriptive media item information (**column 11, lines 63-column 12, line 15, column 6, lines 59-67**) but fails to *explicitly* teach wherein the descriptive media item information further includes *a parental advisory*. However, in the same field of endeavor, Marsh teaches where the metadata for media content such as songs (**column 2, lines 30-32**) can be censor parental ratings (**see column 84, lines 11-20, fig 22**). It would have been obvious to one of ordinary skill in the art to combine the features of Marsh with Wiser et al because doing so would notify customers of the nature of the media content.

53. As per claim 20, Wiser et al fails to explicitly teach *wherein the metadata for the imported media content includes a parental advisory*. However, in the same field of endeavor, Marsh teaches that metadata for media content such as songs (**column 2, lines 30-32**) can include censor parental ratings (**see column 84, lines 11-20, fig 22**). It would have been obvious to one of ordinary skill in the art to combine the features of Marsh with Wiser et al because doing so would notify customers of the nature of the media content.

54. As per claim 38, Wiser et al fail to *explicitly* teach wherein the metadata for the identified media content includes *a parental advisory indication*. However, in the same field of endeavor, Marsh teaches that metadata for media content such as songs (**column 2, lines 30-32**) can include censor parental ratings (**see column 84, lines 11-20, fig 22**). It would have been obvious to one of ordinary skill in the art to combine the features of Marsh with Wiser et al because doing so would notify customers of the nature of the media content.

Conclusion

The prior art made of record and not relied upon, which is considered pertinent to applicant's disclosure, are cited in the Notice of Reference Cited form (PTO-892).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramsey Refai whose telephone number is (571)272-3975. The examiner can normally be reached on M-F 8:30 - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on (571) 272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ramsey Refai/
August 7, 2008
Ramsey Refai
Examiner, Art Unit 3627